

9 FAM 40.104 Notes

(TL:VISA-314; 08-31-2001)

9 FAM 40.104 N1 Inadmissibility for Unlawfully Voting

(TL:VISA-314; 08-31-2001)

In general, an alien who admits voting in the United States in violation of a Federal, State or local law, ordinance or regulation would generally be ineligible under INA 212(a)(10)(D). [See exception 9 FAM 40.104 N4.] If the alien admits to voting in the United States, the consular officer should make a record of the circumstances in the event that the alien later refutes the statement or circumstances. If in the consular officer's judgement, the alien may later on refute the finding of ineligibility, consular officers should give the alien an opportunity to write a statement regarding the circumstances of his or her voting. Such detail may also be necessary in an advisory opinion is requested.

9 FAM 40.104 N2 Applicability

(TL:VISA-314; 08-31-2001)

Inadmissibility under INA 212(a)(10)(D) applies only to voting which occurred on or before September 30, 1996.

9 FAM 40.104 N3 Standards for Applying INA 212(a)(10)(D)

(TL:VISA-314; 08-31-2001)

Normally, consular officers can presume that an alien voting in a political election did so in violation of some law or ordinance. The alien should be provided every opportunity to prove that the particular election regulations permitted his or her participation. If, however, the consular officer seeks verification of those voting requirements, or if a case arises in which the consular officer has any question of this ground of ineligibility, the consular officer should submit an advisory opinion request to the Department (CA/VO/L/A).

9 FAM 40.104 N4 Exception

(TL:VISA-314; 08-31-2001)

The Child Citizenship Act of 2000 (sec. 201(b) of Pub. L. 106-395) added an exception for inadmissibility under INA 212(a)(10)(D) for an alien who voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation if:

- (1) Each parent is or was a U.S. citizen by birth or naturalization;*
- (2) The alien resided permanently in the United States prior to the age of 16; or*
- (3) The alien reasonably believed at the time of such violation that he or she was a U.S. citizen.*

9 FAM 40.104 N5 Waivers

(TL:VISA-314; 08-31-2001)

There is no waiver available for immigrants ineligible under INA 212(a)(10)(D). An ineligible nonimmigrant may apply for a waiver under INA 212(d)(3)(A). [See 9 FAM 40.301Regs/Statutes and 9 FAM 40.301 Notes].